IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.904 OF 2004

Ganpati D. Mohite .. Appellant

vs.

Jagannath B. Mohite .. Respondent.

Shri S.J.Rairkar, Advocate for the Appellant.

Mr.Dilip Bodke, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 22nd March, 2005.

P.C. :

1. Notice of final disposal has been issued. Heard Counsel appearing for the parties. The challenge in this Appeal from Order by the Original plaintiff is to the Judgment and Order dated 30.6.2004 by which the appeal preferred by the Appellant/plaintiff has been partly allowed and an order of remand has been passed.

2. The Counsel appearing for the Appellant has invited my attention to the findings recorded by the Appellate Court and in particular the

findings recorded in paragraph Nos.7 and 9 of its judgment and submitted that while passing order of remand with a direction to decide the suit afresh, no findings could have been recorded by the learned Addl. District Judge on merits of the claim of the Appellant. He submitted that after the Order of Remand, the learned trial Judge may get influenced by the findings recorded in the impugned judgment. Shri Bodke appearing for the Respondents has supported the impugned judgment and order.

3. I have considered the rival submissions. The clause no.2 of the operative part of the impugned Judgment and Order shows that the Order of Remand is passed with a direction to decide the suit afresh. Clause No.3 of the operative part of the impugned order grants liberty to the Appellant/plaintiff to apply for amendment of plaint.

4. It is obvious that the findings and the observations which are made by the Appellant Court are only tentative observations made only for a

limited purpose for passing order of remand. The said observations cannot be construed as a findings recorded by the Appellate Court on merits of the controversy involved in the suit between the parties. Notwithstanding the said findings, the Trial Court will have to decide the suit afresh on its own merits. It is obvious that since direction is to decide the suit afresh, the trial Court will not be influenced by any observations made by the Appellate Court on merits of the issues involved in the suit.

5. In view of this position , this appeal need not be entertained. The Appeal is dismissed with no order as to costs.

6. It is clarified that the trial Court will decide the suit afresh on its own merits without being influenced by the tentative findings recorded by the Appellate Court while passing the order of remand.

. Parties to act on the authenticated copy of this order.

(A.S.OKA,J.)